TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 143

J. C. POTTS, APPELLANT,

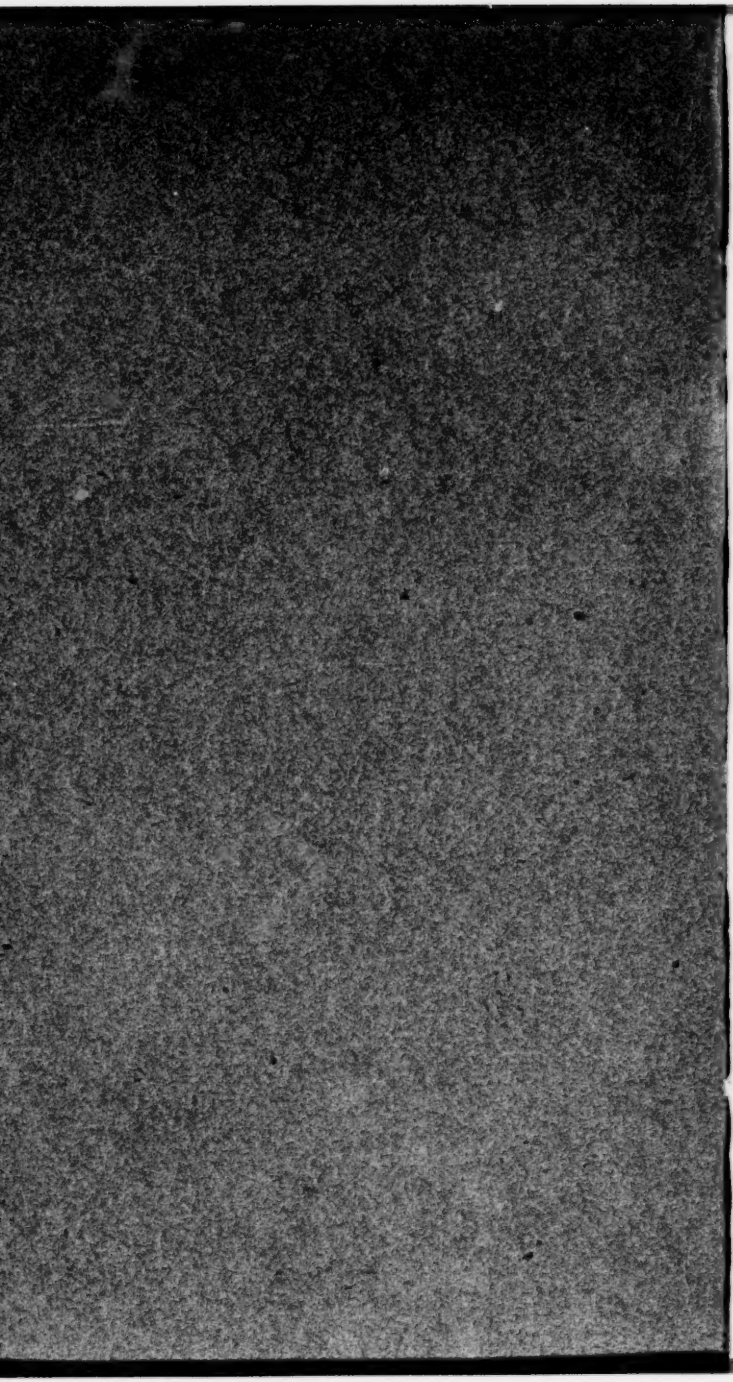
vs.

THOMAS N. HOLLEN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

FILED SEPTEMBER 28, 1898.

(17,006.)



(17,006.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 421.

J. C. POTTS, APPELLANT,

vs.

THOMAS N. HOLLEN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 2, 1899.

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1 In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } No. 576.

UNITED STATES OF AMERICA,
Territory of Oklahoma, } *ss:*

Be it remembered that in the supreme court of the Territory of Oklahoma, at the city of Guthrie, in said Territory, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition in Error and Case-made, Thereto Attached as "Exhibit A."

2 No. 1.

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } Petition in Error.

Plaintiff in error complains of defendant in error for that the said Thomas N. Hollen, at the February, 1897, term of the district court of Kay county, Oklahoma Territory, recovered a judgment by the consideration of said court against the said J. C. Potts in a certain action then pending in the said court, wherein the said Thomas N. Hollen was plaintiff and the said J. C. Potts was defendant. A certified transcript of the record of said court and the original case-made, duly certified and attested, is hereto attached and marked "Exhibit A" and made a part of this petition in error.

And the said J. C. Potts avers that there is manifest error in the said record and proceedings in this, to wit:

First.

In enjoining the said Potts off of said land when the rights of the said parties had not been finally adjudicated by the Land Department.

Second.

In overruling defendant's demurrer to the evidence.

Third.

In granting a mandatory injunction upon the pleadings.

(Signed) GEORGE J. MECHLING,
Att'y for Plaintiff in Error.

3 We, the attorneys of record for the defendant in error in the above-entitled action, hereby waive the issuance and

service of summons in the above-entitled cause and hereby enter a general appearance in said cause for the defendant in error therein.

Dated this 2nd day of April, 1897.

(Signed) BLEVINS & KING,
Att'ys for Defendant in Error.

Filed April 27th, 1897.

(Signed) EDGAR W. JONES, *Clerk.*

4 (2.)

TERRITORY OF OKLAHOMA, } ss:
County of Kay, }

In the District Court.

THOMAS N. HOLLEN, Plaintiff, }
vs. } Case-made.
J. C. POTTS, Defendant. }

Be it remembered that heretofore, to wit, on the 13th day of July, 1896, the plaintiff, Thomas N. Hollen, commenced his action against said defendant, J. C. Potts, by filing in the district court of Kay county his petition, which is in the words and figures following, to wit:

In the District Court of the 4th Judicial District within and for Kay County, Oklahoma Territory.

THOMAS N. HOLLEN, Plaintiff, }
vs. } Petition.
J. C. POTTS, Defendant. }

Now comes the above-named plaintiff and for cause of action against the above-named defendant states:

1st. That on the 13th day of October, 1893, he made homestead entry to the southeast quarter (¼) of section 32, township 28 north, of range 3 east, of I. M., in Perry land district, O. T., which land office then and there had jurisdiction over said tract and the officers of which had authority to make and allow said homestead entry, and that said entry was and is and has at all times been regularly and properly allowed under the rules of the Department of the Interior, and the same is entact upon the records of the land office, and a copy of receiver's duplicate receipt for same being hereto attached, marked "Exhibit A," and made a part hereof.

5 2nd. That there was filed in said land office at Perry, O. T., a certified affidavit of contest by J. C. Potts, defendant herein, and that under the allegations of said contest said cas- went to hearing on the 15th day of April, 1895, the proceedings — which are fully set out in a copy of the decision of said office and of General Land Office, under date of July 15th, 1895, which is hereby referred to and made a part hereof.

Third. That after the hearing of said contest a decision was ren-

dered in favor of plaintiff herein, and the contest case of the said J. C. Potts was dismissed, from which decision she failed to appeal within the time required by law, but did appeal the same on the 19th day of July, 1895, to the Commissioner of the General Land Office; that the same was not appealed within the time required by the rules of said office.

Fourth. That on the 15th day of July, 1895, the Commissioner of the General Land Office at Washington, D. C., affirmed the decision of the local land office at Perry, O. T., in deciding said case, and that on the 25th day of February, 1896, the defendant filed an amended contest affidavit before the Commissioner of the General Land Office, Washington, D. C, and that on the — day of ——, 1895, the said Commissioner rejected said affidavit and also motion for rehearing of the defendant.

Fifth. That upon the 29th day of July, 1896, the defendant herein appealed from said Commissioner's decision rejecting the amended affidavit and motion for rehearing and closing said case; that on the 9th day of June, 1896, the Hon. Secretary of *of* the Interior passed upon said case and affirmed the decision of the Commissioner in closing said case.

6 A copy of all the proceedings hereinabove mentioned are hereto attached and marked Exhibits "A," "B," "C," and "D."

And that all the proceedings before the Interior Department upon which the defendant is entitled to be heard with reference to said land contest have been had and the said case is now fully closed.

6th. That under and by virtue of his homestead entry the plaintiff therein is entitled to the exclusive use, benefit, and possession of all of the southeast quarter (¼) of section 32, township 28 north, of range 3 east.

7th. That under claim of right, based upon said contest so dismissed, the — J. C. Potts entered upon said quarter section and entered into possession of a part thereof, and erected or caused to be erected a house and other improvements thereon, and still maintains possession *there* of a portion of said quarter section under the protest and against the wishes of the plaintiff herein and without claim or color of title thereto.

And that the said J. C. Potts at this time has pending before the Department of the Interior no contest or claim or right or title to said tract or piece of land.

That the said J. C. Potts is insolvent and unable to respond in damages to this plaintiff, and her possessions of and improvements upon said tract prevent this plaintiff from properly cultivating and the use of that portion of the land in her possession.

That the said J. C. Potts threatens, by retaining the possession of a portion of said tract, to involve this plaintiff in many vexatious suits, to his great and irreparable damage and injury; that she has been in possession of a portion of said land since a short time after the opening of the Cherokee outlet; that this plaintiff has no adequate remedy at law.

7 That the defendant has used, cultivated, and controlled about 25 acres of said land, to his damage in the sum of one hundred and fifty dollars ($150.00); that the rents and profits of said land so used by said defendant would amount to about one hundred and fifty dollars ($150.00).

Wherefore the plaintiff prays that an order issue from this court restraining the said J. C. Potts and all her agents and employees from interfering with the said plaintiff's possession, use, and occupancy of the land included in the homestead entry numbered 2170, the same being the southeast quarter (¼) of section 32, township 28 north, of range 3 east.

That she be restrained from cultivating, improving, or occupying any portion of said tract, and that she — permitted within a certified time, to be fixed by the court, to remove therefrom any improvements which she may lay claim to and which have been constructed by her prior to and before the homestead entry made by this plaintiff; and that all such improvements as were placed upon said land by the defendant after the homestead entry of the plaintiff was made should be subject to rents, and all damages sustained by the plaintiff in the defendant's occupancy and use of said land, and to vacate said land on the order of the court, and for such other and further relief as to the court may seem just and proper.

THOMAS N. HOLLEN.

TERRITORY OF OKLAHOMA, } ss:
County of Kay, }

Thomas N. Hollen, being duly sworn according to law, on oath says that he has read the foregoing petition and knows the contents thereof, and that the stetements made therein are true.

(Signed) THOMAS N. HOLLEN.

8 Subscribed and sworn to before me this 13th day of July, A. D. 1896.

(Signed) F. M. BEALE,
Deputy Dist. Clerk.

(EX. A.)

4–138.

Receiver's duplicate receipt No. 2170; application No. 2170.

Homestead.

RECEIVER'S OFFICE, PERRY, O. T., *Oct.* 13, 1893.

Received of Thomas N. Hollen the sum of fourteen dollars, being the amount of fee and compensation of register and receiver for the entry of S. E. ¼ of sec 32, tw. 28 N., range 3 east, under section 2290, Revised Statutes of the United States.

$14.00. J. H. KING, *Receiver.*

Copy.

(Ex. B.)

Vol. 22, No. 1119.

DEPARTMENT OF THE INTERIOR, F. L. C. R. F. H.
WASHINGTON, *June* 9, 1896. G. B. G. R. W. H.

J. C. POTTS
vs.
THOMAS N. HOLLEN. } H. E. 2170. Contest.

Decision of July 10th, 1895, affirmed.

The Commissioners of the General Land Office.

SIR: J. C. Potts appeals from your office decision of July
9 10th, 1895, dismissing her contest against the homestead entry No. 2170, made by Thomas N. Hollen, for the S. E. ¼, sec. 32, tw. 28 N., range 3 east (I. M.), Perry land district, Oklahoma.

The facts are sufficiently stated in your said office decision. The decision complained of appears to be in accordance with the case of Welsh *vs.* Butler, decided by this department November 2nd, 1895 (21 L. D., page 369), and in accordance with the rule there announced your said decision appealed from is affirmed. The papers in the case are herewith returned.

Very respectfully,
(Signed) HOKE SMITH, *Secretary.*

(Ex. C.)

Amended Affidavit of Contest.

U. S. LAND OFFICE, PERRY, O. T., *February* 25, 1896.

Personally appeared before the undersigned A. C. Potts, of Kay county, Oklahoma Territory, who upon her oath says:

That she is well acquainted with the tract of land embraced in the homestead entry of Thomas N. Hollen, numbered 2170, upon the S. E. ¼ of sec. 32, tw. 28 N., R. 3 east, made Oct. 13th, 1893, at the U. S. land office at Perry, Okla., and knows and has known the condition of the same; also:

1st. That the said Thomas N. Hollen entered upon and occupied the lands known as the Cherokee outlet subsequent to date of the President's proclamation of August 19th, 1893, and prior to 12 o'clock noon, central standard time, of Sept. 16, 1893. This allegation is made on information and belief.

2nd. That the said J. C. Potts had the first improvements on said land, and had a house, a fence, consisting of posts and one wire, around the entire quarter sec. of land, and about one-fourth
10 acre thereof broken prior to the 13th of Oct., 1893, and prior to any improvements placed on said land by the said Thomas N. Hollen, and this the said contestant is ready to prove at such

time and place as may be named by the register and receiver for a hearing in said case, and she therefor asks to be allowed to prove said allegations, and that the said homestead entry No. 2170 may be declared canceled and forfeited to the United States, she, the contestant, paying the expenses of such hearing or such portion thereof as may be taxed to her.

her
J. C. x POTTS.
mark.

Witness- to mark:
ARISPEC POTTS &
J. R. POTTS.

Subscribed and sworn to before me this 25th day of February, 1896.

[SEAL.] FRANK B. APPERSON,
Notary Public.

Com. expires Dec. 18th, 1897.

Also, at the same time and place, appeared J. R. Potts, who, being duly sworn, deposes and says that he is acquainted with the tract of land described in the affidavit of J. C. Potts, and that he knows from personal observation that the statements therein made as to the improvements on said land are true, and that from statements made within the hearing of this affiant by the said Hollen he believes that the said Hollen entered the land known as the Cherokee outlet in violation of the President's proclamation of August 19th, 1893.

J. R. POTTS.

Sworn to and subscribed before me this 25th day of February, 1896.

[SEAL.] FRANK B. APPERSON,
Notary Public.

Com. expires Dec. 18, 1897

Address Mrs. J. C. Potts, Newkirk, Okla., Kay county.

11 The endorsements on the back of said petition *is* as follows, to wit: No. 629. Thomas N. Hollen *vs.* J. C. Potts. Petition. Filed July 13th, 1896. J. H. Havinghorst, clerk; F. M. Beale, dep. Blevins, King & Weir, att'ys for pl't'ff, Newkirk, O. T.

That afterwards, to wit, July 13th, 1896, a summons was issued, served, and returned July 15th, 1896.

And afterwards, to wit, August 4th, 1896, defendant filed her motion to make said petition more definite and certain.

And afterwards, to wit, August 11th, 1896, plaintiff was given 5 days in which said decision *on* the Commissioner of the General Land Office was filed, August, 1896.

And afterwards, to wit, on the 27th day of August, 1896, said defendant filed in said court her answer to said petition; which answer is in the words and figures following:

TERRITORY OF OKLAHOMA, } ss:
County of Kay, }

In the District Court.

THOMAS N. HOLLEN, Pl'nt'ff, }
vs. } Answer.
J. C. POTTS, Def't. }

Comes now the defendant and, for her answer to the plaintiff's petition herein filed, admits that defendant has the homestead entry on said land and, that defendant filed a contest against said entry, but denies each and every other material allegation therein contained.

2nd defence. Defendant, further answering, alleges that she filed a contest against the said entry of the said Hollen, charging and alleging in substance that plaintiff was disqualified to enter and hold lands by reason of having entered the Cherokee outlet prior to 12 o'clock noon of Sept. 16th, 1893, and run from the south
12 side of the Chillocco reservation, which is three and one-half miles south of the lines established in the President's proclamation; that said contest was rejected and defendant duly appealed, and while said cause was still pending defendant filed her amended affidavit of contest against said entry, a copy of which said contest is attached to plaintiff's petition, marked "Exhibit C," and hereby referred to and made a part of this answer.

Defendant further alleges that within the time required by the rules of practice in the Land Department, to wit, July 22, 1896, she filed a motion for a review of the Secretary's decision of June 9, 1896, a copy of which said motion is hereto attached, marked "Exhibit A," and made a part hereof; and that said cause is now and was pending at the commencement of this action in the Land Department of the United States.

Wherefore defendant prays that said action of plaintiff be dismissed, and that she have judgment for her costs.

GEORGE MECHLING,
Att'y for Def.

TERRITORY OF OKLAHOMA, } ss:
County of Kay, }

J. C. Potts, being duly sworn, on her oath says that she is the defendant in the above-entitled action; that she has read the foregoing answer and knows the contents thereof, and that the facts therein stated are true.

her
J. C. x POTTS.
mark.

Witness to mark:
ARISPA POTTS.

Subscribed and sworn to before me this 21 day of August, 1896.
FRANK B. APPERSON,
Notary Public.

My com. expires Dec. 18th, 1897.

13 (Ex. A.)

Before the Honorable Secretary of the Interior.

J. C. Potts
vs.
Thomas N. Hollen. } H. E. No. 2170, for the S. E. ¼ of sec. 32, tw. 28 N., of R. 3 east, I. M.

Motion for Review.

Comes now J. C. Potts, by her attorneys, Morgan & Pancoast, and asks for a review and reconsideration and the reversal of the decision rendered in the above-entitled cause June 9th, 1896, and as grounds for said motion alleges that the Hon. Secretary of the Interior erred in said decision as follows, to wit:

First. That said decision was contrary to the law and the rules and regulations of the Department of the Interior.

Second. That the Hon. Secretary erred in affirming said decisio of the Hon. Commissioner in said cause.

Third. That the Hon. Secretary erred in holding that the allegations made in the affidavit of contest were insufficient to warrant a hearing.

Fourth. The Hon. Secretary erred in not considering the amended affidavit filed by the contestant in February, 1896 (after the Commissioner's decision), which affidavit clearly charges:

(1st.) That the defendant entered upon and occupied portions o the Cherokee outlet subsequent to August 19, 1893, and prio
14 to 12 o'clock noon, central standard time, Sept. 16th, 1893.

(2nd.) That prior to the entry of the defendant the contestant had valuable improvements upon said tract of land, and tha the same were the first improvements upon said tract.

(3rd.) The Hon. Secretary erred in not ordering a hearing upon the allegations in said amended affidavit and returning said cause for a hearing thereon.

Respectfully submitted.

J. C. POTTS,
By MORGAN & PANCOAST, *Her Att'ys.*

We, the undersigned, attorneys of record for Thomas Hollen, hereby accept the service of the foregoing motion for review, and acknowledge the receipt of a true copy thereof this 22nd day of July, 1896.

JNO. OLIPHANT,
Att'y for Hollen.

Before the United States Land Office, Perry, O. T.

I, Dick T. Morgan, being first duly sworn, on my oath state that I am one of the attorneys for J. C. Potts; that the motion for review hereto attached is filed in good faith and not for the purpose of delay.

(Signed) DICK T. MORGAN.

Subscribed and sworn to before me this 22nd day of July, 1896.
LOUIS DAVIS, *Register.*

Said answer is endorsed on the back as follows: No. 629. Thomas N. Hollen *vs.* J. C. Potts. Answer. Filed August 27, 1896. J. H. Havinghorst, clerk, by F. M. Beale, dep. G. J. Mechling, for def.

15 And afterwards, to wit, January 8th, 1897, plaintiff filed his reply, which is in the word- and figures following:

In the District Court of Kay County, Oklahoma Territory.

THOMAS N. HOLLEN, Pl'nt'f,
vs.
J. C. POTTS, Def't. } Reply.

Comes now the plaintiff, by his attorneys, and denies each and every material allegation in the answer of defendant filed herein.
BLEVINS & KING,
Att'ys for Plaintiff.

And afterwards, to wit, March 3rd, 1897, said cause came on for hearing, and plaintiff, to sustain the issues, introduced the following testimony, to wit:

A letter of the Hon. Commissioner of the General Land Office, which is in the words and figures following:

"H." J. L. M. Docket A, Case 165. W. M. O. D., T. W. A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November 24th*, 1896.

J. C. POTTS
vs.
T. N. HOLLEN.

Attempt to Amend Affidavit of Contest after Decision of this Office is Rendered.

Register & receiver, Perry, Okla.

SIRS: Thomas N. Hollen made H. E. No. 2170 for the S. E. ¼ sec. 32, tw. 28 N., R. 3 east, Perry land district, Oklahoma, against which J. C. Potts filed a contest, charging that Hollen entered into the Cherokee outlet from the southern boundary of the Chillocco School reservation. Said contest was dismissed by the local officers on April 15th, 1895, and an appeal being taken, the action below
16 was affirmed by this office on July 10th, 1895. A further appeal was filed; whereupon the department, on June 9th, 1896, affirmed the decision of this office.

A motion for review, alleging that the department erred, "in not considering the amended affidavit filed by the contestant in February, 1896 (after the Commissioner's decision), which affidavit clearly

charges (1) that the defendant entered upon and occupied portions of the Cherokee outlet subsequent to August 19th, 1896, and prior to 12 o'clock noon, central standard time, Sept. 16th, 1893."

You will find herewith a copy of the department decision of November 12, 1896, denying said motion in the following language:

"Your office could not, in rendering its decision, take into consideration facts of which it was not informed until afterward; that this department very properly held that said decision of your office, in view of the records before it, was correct. The allegation of having entered the Territory prior to noon of the day when the Territory was opened is an entirely different one from that of having entered it from the Chillocco School reservation, and one with which this department has nothing whatever to do until it has been passed upon by the proper authorities and brought here on appeal or in some other proper manner.

"The motion for review is therefore overruled. The affidavits referred to are herewith returned for such action as your office may deem proper in the premises."

The case is hereby closed, and you will advise said Potts that she may, if she elects, file a new contest against the entryman Hollen, incorporating — the charge set out in her amended affidavit in due time the action taken, transmitting therewith evidence of
17 notice hereof and of the decision of the department.

Respectfully, E. F. BEST,
Commissioner.

Served Dec. 22, 1896.

And plaintiff, to sustain the issues, introduced the following testimony:

Plaintiff, being called in his own behalf and being duly sworn, testifies as follows:

State your name.

Thomas N. Hollen.

Are you the plaintiff in this action?

I am.

You may state whether or not you have the homestead entry on the S. E. ¼ sec. 32, tw. 28 N., R. 3 east.

I have.

Objected to, as the records are the best evidence.

Is the defendant residing on said land?

She is.

How much of said land has she under her possession and control?

About 25 acres.

Was she residing on this land at the commencement of this action?

She was.

State whether or not you notified said defendant to vacate prior to the bringing of this action.

No; I did not.

Plaintiff rested, and defendant thereupon demurred to the evidence on the grounds:

1st. That the evidence did not sustain the allegations of the petition.

2nd. That the evidence did not show plaintiff to have a
18 cause of action.

Which said demurrer was overruled by the court and duly excepted to by defendant.

The defendant offered no testimony.

And thereupon the court made the orders and findings set forth in the journal entry, then and there reduced to writing and signed by the court; which journal entry, orders, and judgment of the court *is* in words and figures following:

In the District Court of Kay County, Oklahoma Territory.

THOMAS N. HOLLAND, Plaintiff,
vs.
J. C. POTTS, Defendant.

Journal Entry.

Now, on this day, this cause coming on for hearing and the plaintiff being present in person and by his counsel, Blevins & King, and the defendant being represented by her attorney, Geo. J. Mechling, and both parties announce themselves ready for trial; and thereupon plaintiff testified in his own behalf and rested, and defendant having demurred to said evidence, which said demurrer was overruled by the court and duly excepted to by the defendant, and the defendant failing to introduce any testimony, but standing on her demurrer, and after hearing the argument of counsel and being fully advised in the premises, the court finds that the plaintiff is entitled to a peremptory injunction, enjoining and restraining the defendant from interfering with his right to possess and control the southeast quarter of sec. 32, twp. 28 N., of range 3 east, of land in Kay county, Oklahoma. It is hereby ordered and adjudged that the defendant be enjoined and restrained from interfering with the plaintiff's rights to possess and use said land, except that the defendant is hereby given the right to enter upon and harvest the fall wheat crop she has sown upon the land in dispute, and is to
19 remove said wheat from said land within thirty days after the same is ripe and fit to cut; and is hereby enjoined off of said land completely, except as to the right to harvest her wheat sown thereon; and that she is hereby given thirty days to remove her property and improvements from said land from the date of this order; and she is further enjoined and restrained from removing, or interfering —, or injuring in any way any well of water that she may have placed upon said land, and all growing timber or trees that she may have placed upon said land, and any growing timber or trees that she may have planted.

To all of which orders and decrees the defendant duly excepted and excepts.

The defendant is hereby given thirty days to make a case for the Supreme Court; five days to the plaintiff to suggest amendments, and three days to settle the case-made, and ten days to file a bond for appeal, said bond to be in the sum of three hundred dollars ($300.00), woth good and sufficient sureties.

And in the event said defendant takes appeal in this case she is then to be confined and placed upon five acres of said land immediately around her said house in which she now resides; and the appeal to become effective must be filed in the Supreme Court within sixty days from this order, and that the plaintiff pay costs of this action to date.

To which order restricting defendant to five acres of land she duly excepted and excepts.

Dated this 3rd day of March, A. D. 1897.

A. G. C. BIERER, *Judge.*

O K.

GEORGE J. MECHLING,
Attorney for Defendant.

Said journal entry is endorsed on back as follows: 629. Hollon *vs.* Potts. Journal entry. Filed March the 6th. 1897. J. H. Havighorst, clerk, by W. C. Glenn, deputy. O K. Blevins & King, for pl'ff. O K. George J. Mechling, att'y for def.

20 And afterwards and on the 11th day of March, 1897, said defendant filed her bond for the stay of execution upon said judgment; which said bond was duly approved by the clerk of said court on the 11th day of March, 1897, and is in the words and figures following, to wit:

In the District Court of Kay County, Oklahoma Territory.

THOMAS N. HOLLEN, Pl'nt'ff,
vs.
J. C. POTTS, Defendant.

Undertaking on Appeal.

J. C. Potts, as principal, and —— —— and —— ——, as sureties, hereby acknowledge themselves bound to the plaintiff herein, Thomas N. Hollen, in the sum of three hundred dollars ($300.00), upon the following conditions:

Whereas the said plaintiff, on the 3rd day of March, 1897, recovered a judgment against the defendant, J. C. Potts, for an injunction removing said defendant from the premises described in plaintiff's petition in said action, and the court, at the time of rendering said judgment, further ordered and adjudged that said defendant be allowed sixty days within which to file an appeal in the supreme court of the Territory of Oklahoma for the reversal of said judgment,

and in case said appeal was so filed then the defendant to be allowed to retain the possession of five acres of said land immediately around her said house, in which she now resides, during the pendency of said appeal:

Now, therefore, if defendant shall duly prosecute her appeal on said action within the time limited by said order, and duly pay all costs that may be adjudged against her on said appeal, and duly comply with all orders or judgments of the court rendered therein, and pay to plaintiff all damages occasioned by the detention and occupancy of said five acres during the pendance of said action in case the judgment of the district court shall be finally affirmed, then this obligation to be void; otherwise to remain in full force and effect.

21 Witness our hands this 10th day of March, 1897.

her
J. C. x POTTS.
mark.
J. R. POTTS.
C. L. CUPPY.

Witness- to mark:
ARISPA POTTS.
J. R. POTTS.

Property Schedule.

J. R. Potts, being first duly sworn, on his oath deposes and says that he is a resident of the Territory of Oklahoma and of the county of Kay, and is worth the sum of $980.00, nine hundred and eighty dollars, over and above all his debts, liabilities, and exemptions and of property subject to execution under the laws of the Territory:

One horse, worth	$25.00
Harness & wagon, worth	50.00
Five head of cattle, worth	125.00
Twelve hundred bushel- corn (cribbed)	180.00
Five hundred dollars in notes, secured by chattel mortgage, worth	500.00
	980.00

J. R. POTTS.

Subscribed and sworn to before me this 10th day of March, A. D. 1897.

(Signed) F. M. BEALE, *D. D. Cl'k.*

Said bond is endorsed on the back as follows: No. 629. Thomas N. Hollen, plaintiff, *vs.* J. C. Potts, defendant. Undertaking on appeal. Filed and approved by me this 11th day of March, 1897. J. H. Havinghorst, clerk; F. M. Beale, dep.

22 TERRITORY OF OKLAHOMA, } ss:
County of Kay, }

I hereby certify that the foregoing copies of petition, answer, reply, journal entry, and undertaking on appeal are each and all true and exact copies of the originals now on file and of record in my office.

Dated this 8th day of April, 1897.

[SEAL.] J. H. HAVINGHORST,
Dist. Clerk.
F. M. BEALE, *Dep.*

The foregoing contains a true and correct statement and copy of all the pleadings, motions, orders, testimony, findings, and proceedings upon which judgment was rendered.

(Signed) GEORGE J. MECHLING,
Att'y for Def't.

We, the undersigned, attorneys for the plaintiff in the foregoing suit, hereby certify that the foregoing case-made and certified copy of record of proceedings in said case was duly served on *me* this 2nd day of April, 1897, and that the same contains a true and correct copy of all the pleadings, motions, orders, testimony, findings, and proceedings upon which judgment was rendered, as well as a true copy of all the orders of the court in reference thereto, as well as undertaking of defendant on appeal, and hereby *I* waive all time for submitting amendment to said case and certified record and agree that the same may be signed and settled without further notice.

BLEVINS & KING,
Att'ys for Plaintiff.

23 *Certificate.*

This is to certify that the foregoing case-made and the amendments thereto have been duly served in the due time and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same as above set forth and corrected by me is a true and correct statement of all the pleadings, motions, orders, findings, proceedings, and judgment had in this case, and I hereby settle, allow, and certify the same as true and correct, and hereby order that the clerk of the district court attest the same with the name and seal of said court and file the same of record as provided by the law.

Witness my hand, at Perry, Oklahoma, this 10th day of April, 1897.

[SEAL.] A. G. C. BIERER, *Judge.*

Attest: J. H. HAVINGHORST, *Clerk.*
F. M. BEALE, *Dep.*

24 Endorsed on back as follows: No. 576. In the supreme court of the Territory of Oklahoma. J. C. Potts, plaintiff in error, *vs.* Thomas N. Hollen, defendant in error. Petition in error, case-made, and waiver of issuance of summons. Filed April 27th, 1897. Edgar W. Jones, clerk. Filed April 14th, 1897. J. H. Hav-

inghorst, clerk; F. M. Beale, dep. George J. Mechling, Newkirk, O. T., att'y for pl't'ff in error.

25 And afterwards and on the 12th day of February said court duly made and entered a judgment in said cause in words and figures following, to wit:

(3.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } No. 576. Journal.

The above cause coming on for disposition, the court being fully advised in the premises, it is considered, ordered, and adjudged that the same be in all things affirmed; to which the plaintiff in error excepts, and exception allowed.

26 And at the same time rendered a written opinion in words and figures following, to wit:

(4.)

(Supreme Court of Oklahoma, Feb. 12, 1898.)

POTTS
vs.
HOLLON.

Injunction—When properly granted.—A filed a homestead entry for a tract of Government land. B initiated a contest, alleging that A was disqualified from entering the land. The contest was by the Land Department decided in favor of A. During the pendency of such contest B filed an amended affidavit of contest, alleging a different ground of disqualification upon the part of A. Shortly after B first instituted the first contest, B in some manner became possessed of about 25 acres of the land, and held such possession until after the final decision upon the first contest. Held, that upon the authority of Sproat *vs.* Durland, 35 Pac., 682, 886, 2 Okl., 24, A was entitled to an injunction restraining B from interfering with the possession of A and requiring him to remove from the land in dispute. McAtee and Keaton, JJ., dissenting.

(Syllabus by the court.)

Appeal from district court, Kay county.

Action by Thomas Hollon against J. C. Potts for an injunction. Judgment for plaintiff, and defendant appeals. Affirmed.

George J. Mechling for appellant, John A. Oliphant for appellee.

DALE, *C. J.*:

This case comes here on appeal from Kay county to reverse the order of the district court in granting an injunction prohibiting

the appellant from further interfering with the possession of the appellee in a tract of land covered by the homestead entry of the latter, alleging insolvency on the part of appellee. Briefly stated, the facts are as follows:

On October 13, 1893, Hollon filed his homestead entry for the tract of land situated in Kay county, and afterwards Potts filed an affidavit of contest against Hollon upon the one ground of disqualification to enter the land by reason of Hollon's having entered the Cherokee outlet from the south line of the Chilocco reservation, 3½ miles south of the Kansas line. This contest was by the local land office and by the Commissioner of the General Land Office decided adversely to Potts. After the contest had been so decided in the local land office, and while the same was pending upon ap-

27 peal before the Commissioner of the General Land Office, Potts filed an amended contest affidavit, charging generally that Hollon was disqualified to enter the land by reason of having entered and occupied portions of the Cherokee outlet subsequently to August 19, 1893, and prior to 12 o'clock noon of September 16, 1893. At the time the original contest was being considered by the Commissioner of the General Land Office the amended contest was not before that tribunal, and upon such original contest proceedings the case was by the Commissioner of the General Land Office entirely closed and the contest dismissed. A motion for review was filed before the Commissioner of the General Land Office, and in such motion the fact was shown that prior to the date of the dismissal Potts had filled his amended contest affidavit. The only action upon the amended affidavit taken was simply to refer it to the local land office for their consideration.

It is claimed by the appellant that the court below erred in granting the injunction while the contest upon the amended affidavit was pending, and, further, that Hollon had slept upon his rights by permitting Potts to remain upon the land for a period of about three years before commencing the action to remove him, and in support of this contention is cited Proctor *v.* Stuart (Okl.), 46 Pac., 501.

Upon the first contention the decision of Sproat *v.* Durland, 2 Okl., 24; 35 Pac., 682, 886, governs. As a matter of law, Potts never had any rights as a settler upon the land. The contest was not based upon the grounds of prior settlement, but was made simply to secure a preferential right after the entry of Hollon should be canceled.

As to the second proposition advanced, this case presents an entirely different aspect from that before us in Proctor *vs.* Stuart, *supra*. In the case under consideration the original contest affidavit

28 by Potts was decided before the action to remove was instituted, and it is sought by filing a new contest and styling it an "amendment" to the original contest to retain possession. There are very many grounds of disqualification which may be alleged against a homestead entryman, and if a party were permitted to retain possession of his adversary's land during the lifetime of as many contests as he might bring, based upon the disqualification of an entryman, the children of the homestead settler would hardly live

long enough to dispossess such a contestant. We find no error in the decision, and the judgment of the lower court is affirmed.

The other justices concurring, except Bierer, J., who presided at the hearing of the cause in the court below, and McAtee and Keaton, JJ., dissenting.

29 (5.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLAN, Defendant in Error. } Petition for Rehearing. Case No. 576.

Now comes the above-named plaintiff in error and petitions the court for a rehearing and reconsideration of the decision rendered in this cause for the following reasons:

First. That the court erred in sustaining the order of the trial court overruling the demurrer of plaintiff in error to the evidence of defendant in error, as an examination of the record will clearly disclose that no sufficient evidence was offered to authorize the judgment rendered, and from the journal entry of judgment made and entered by the trial court it appears that the court considered and was controlled by facts in no manner appearing in the evidence in said cause.

Second. That court erred and overlooked the established law of this court in allowing a mandatory injunction against plaintiff in error while the rights of the parties were still pending in the Land Department.

Third. The court erred and overlooked the controlling decision of Laughlin *vs.* Fariss, rendered in this court September 3, 1897, it appearing from the pleadings and evidence presented in this record that the defendant in error, plaintiff below, was in possession of the greater part of the land in question and had sufficient possession to comply with the requirements of the homestead laws of the United States, and that no necessity for remedy by injunction, either ordinary, mandatory, or "*pre*emptory," existed at the time of beginning the suit or at the time of trial. If defendant in error, plaintiff below,
30 had the right to maintain a suit for possession of the land in question or any part thereof, at the time this action was commenced, he had a plain, speedy, and adequate remedy at law, and for that reason the court had no jurisdiction to issue the order of injunction, and the judgment should have been given for the plaintiff in error instead of for the defendant in error.

Fourth. The court erred and overlooked the controlling decisions and established law in granting the mandatory injunction against defendant at the suit of defendant in error, who was disqualfied to take and hold the land in question by reason of having entered the same from the Chillocco School reservation, within the boundaries of the Cherokee outlet, at 12 o'clock noon of September 16, 1893. Defendant in error, at most, had a right to such possession as was necessary to protect himself under the laws of the United States,

and when he sought a remedy in the court beyond this interest he should be held to have submitted to the court his own right and qualification to maintain the action.

Wherefore plaintiff in error prays that she be granted a rehearing and reargument of said cause, and for relief as prayed for in her petition in error.

S. H. HARRIS AND
G. J. MECHLING,
Attorneys for Plaintiff in Error.

Service of a true copy of the foregoing petition accepted this 8th day of March, 1898.

E. BEE GUTHREY,
Att'y for Def. in Error.

Endorsed: Filed March 11, '98. Edgar W. Jones, clerk.

31 (6.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } No. 576. Order.

Now, on this 10th day of June, 1898, this cause coming on for decision upon the application of the plaintiff in error for a rehearing, and the court having had said matter under advisement and being sufficiently advised in the premises—

It is therefore by the court considered, ordered, and decreed that said application for a rehearing be, and the same is hereby, overruled and denied; to which ruling the said plaintiff in error duly excepts.

32 (7.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } Petition for Appeal. Case No. 576.

The above-named plaintiff in error, conceiving himself aggrieved by the several judgments entered in this case, to wit, the judgment entered herein on the 12 day of Feb'y, 1898, affirming the judgment of the district court of the county of Kay, of the Territory of Oklahoma, in the premises, and also the judgment rendered herein on the 10 day of June, 1898, overruling and denying the petition and application of the plaintiff in error for a rehearing, does hereby appeal from said orders and decrees, and each and both of the same, to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and plaintiff in error alleges that the amount in controversy in this action exceeds

the sum of five thousand (5,000) dollars, and refers to the affidavits filed herewith as evidence thereof, and he prays that this his appeal may be allowed, and that the transcript of the record, proceedings, and papers upon which said orders were made, duly authenticated, may be sent to the Supreme Court of the United States, and that the court may fix the supersedeas bond of the said appellant, to be given within a reasonable time, and enter all necessary orders herein allowing the foregoing appeal.

JOHN W. SHARTEL AND
S. H. HARRIS,
Solicitors for Plaintiff in Error.

TERRITORY OF OKLAHOMA, *Supreme Court,* } ss:

S. H. Harris, of lawful age, being first duly sworn, upon his oath deposes and says that he is one of the attorneys in the above-
33 entitled cause and knows the nature of said controversy; that there is more than five thousand dollars involved in said appeal, exclusive of costs.

S. H. HARRIS.

Subscribed and sworn to before me this 2nd day of September, 1898.

CHAS. E. DENNIS,
[SEAL.] *Notary Public.*

My com. expires Nov. 24th, 1901.

Endorsed as follows: J. C. Potts *vs.* Thomas N. Hollen. Petition for appeal. Filed Sept. 3, 1898. Benj. F. Hegler, clerk sup. ct.

34 (8.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOS. N. HOLLEN, Defendant in Error. } No. 576.

Assignment of Error on Appeal.

Now, on this 4th day of September, 1898, comes the said plaintiff in error, J. C. Potts, by John W. Shartel and S. H. Harris, his solicitors, and says that the decree entered in said cause on the 12 day of Feb'y, 1898, affirming the judgment of the court below, and the decree entered in said cause on the 10 day of June, 1898, denying and refusing the petition of plaintiff in error for a rehearing, are each and both erroneous and against the justice and rights of the plaintiff in error for the following reasons, to wit:

First. That said supreme court erred in affirming the judgment of the court below.

Second. That said supreme court erred in denying the petition of plaintiff in error for a rehearing.

Third. Said court erred in holding that the petition of defendan in error in the court below stated facts sufficient to constitute a caus of action.

Fourth. Said supreme court erred in holding that the court belo had jurisdiction of the subject of said action and the right to ente tain the same as a proceeding in equity and without a trial by jur

Fifth. Said court erred in holding that the defendant in erro plaintiff in the trial court, was entitled to relief by mandatory i junction against plaintiff in error, defendant below, after said defen ant in the trial court had been permitted by plaintiff to remai upon said land for several years and expend money in the improv ment thereof by the implied consent of the said plaintiff.

35 Sixth. Said supreme court erred in holding that plainti in error was not entitled to remain in possession of said lan in order to give common-law notice of his rights and interes therein until such time as the title passed from the Government the United States to the said Hollen, plaintiff in error, thereby e abling him to commence an action against the said Hollen for t recovery of said land.

Seventh. Said supreme court erred in not holding and decidi that the said Hollen, defendant in error, was and is a "sooner" a disqualified to maintain the action in mandatory injunction, base solely upon his homestead entry, in the face of his admissions th he made the run into the Cherokee outlet from the Chilocco India School reservation at the hour of opening.

JOHN W. SHARTEL AND
S. H. HARRIS,
Solicitors for Plaintiff in Error.

Endorsed as follows: J. C. Potts *vs.* Thomas N. Hollen. Assig ment of error on appeal. Filed Sept. 3, 1898. Benj. F. Hegl clerk sup. ct.

36 (9.)

UNITED STATES OF AMERICA, }
Territory of Oklahoma. }

Supreme Court.

J. C. POTTS, Plaintiff in Error, }
vs. }
THOMAS N. HOLLEN, Defendant in Error. }

Now, on this 3d day of September, 1898, is presented the petiti for an appeal herein, and it appearing to the court that there is mo than five thousand (5,000) dollars involved in the appeal prayed f herein, exclusive of costs, and that plaintiff in error is entitled an appeal to the Supreme Court of the United States, as per t prayer of his petition,

It is therefore by the court ordered that the petition of plaint

in error for an appeal to the Supreme Court of the United States be allowed.

JNO. H. BURFORD,
Chief Justice.

Attest: BENJ. F. HEGLER,
[SEAL.] *Clerk Sup. Ct.*

Endorsed as follows: J. C. Potts, plaintiff in error, *vs.* Thos. N. Hollen, defendant in error. Order granting appeal. Filed Sept. 3, 1898. Benj. F. Hegler, clerk sup. ct.

37 (10.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } Order. No. 576.

Journal Entry.

Now, on this 3d day of September, 1898, comes S. H. Harris and John W. Shartel, solicitors for the plaintiff in error in this court, and present to the court the application of the plaintiff in error for an appeal to the Supreme Court of the United States from the original judgment rendered herein affirming the judgment of the court below, and from the subsequent decree overruling the application of the plaintiff in error for a rehearing thereon, and the plaintiff in error having filed with said application for an appeal his assignment of errors and presented said application to the court, it is—

Ordered that said appeal to the Supreme Court of the United States be, and the same is hereby, granted, and the clerk of this court is hereby directed to certify a full, true, and complete transcript of the record of this court to the Supreme Court of the United States within 30 days from this date.

And upon further application of the plaintiff in error that the amount of his supersedeas bond be fixed to supersede the judgment of this court in the premises, it is by the court—

Ordered that upon the giving of an undertaking in the sum of one thousand (1,000) dollars, to be approved by the chief justice of said court within 20 days from this date, the said appeal shall operate as a supersedeas, and execution herein shall be stayed during said term of 20 days to allow the giving of said supersedeas bond.

JNO. H. BURFORD,
Chief Justice.

Attest: BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court.*

Endorsed as follows: J. C. Potts, pl't'f in error, *vs.* Thomas N. Hollen, def't in error. Journal entry of order granting appeal and fixing bond. Filed Sept. 3, 1898. Benj. F. Hegler, clerk sup. ct.

38 (11.)

In the Supreme Court of the Territory of Oklahoma.

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error. } Undertaking on Appeal.

Know all men by these presents that we, J. C. Potts, as principal, and J. R. Potts and T. J. Harris, D. F. Sparks, J. M. Barringer, J. B. Hart, T. K. Bell, A. J. Green, as sureties, are held and firmly bound unto the defendant, Thos. N. Hollen, in the full and just sum of one thousand (1,000) dollars, to be paid to the said Thos. N. Hollen, his certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5 day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

The conditions of the above and foregoing obligations are such as that whereas lately, at a session of the supreme court of the Territory of Oklahoma, in a suit pending in said court between J. C. Potts, plaintiff in error, and Thos. N. Hollen, defendant in error, a decree was rendered against the said J. C. Potts, and the said J. C. Potts having appealed therefrom to the Supreme Court of the United States, and having filed the said appeal in the office of the clerk of said court to reverse said judgment in the aforesaid suit, and procured citation to issue to the said Thos. N. Hollen, admonishing him to be and appear at a session of the Supreme Court of the United States to be holden in the city of Washington on the 3 day of October next:

39 Now, if the said J. C. Potts shall prosecute said appeal to effect and answer all damages and costs if she fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

her
MRS. J. C. x POTTS.
mark.
J. P. POTTS.
T. J. HARRIS.
D. F. SPARKS.
J. M. BARRINGER.
J. B. HART.
T. K. BELL.
A. J. GREEN.

Witness to mark:
GEO. J. MECHLING.
ARISPA POTTS.

The foregoing undertaking and sureties thereon approved by me this 21st day of September, 1898.

JNO. H. BURFORD,
Chief Justice.

[SEAL.]

Attest: BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed as follows: J. C. Potts, plaintiff in error, *vs.* Thos. N. Hollen, defendant in error. Bond. Filed Sept. 21, '98. Benj. F. Hegler, clerk sup. ct.

40 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, J. C. Potts, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a single man; that I further say that I am worth the sum of two hundred dollars ($200.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

2 head of cattle, worth the sum of.....	$50.00
——, worth the sum of.....	
Promissory notes, secured by mortgages, worth the sum of.	400.00
——, worth the sum of.....	

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of.... .....
That all of my other debts amount to the sum of.....

And of the above-named property I claim as my exemptions—

——, worth the sum of..... ....
——, worth the sum of..... .. ..
——, worth the sum of..... ... ...

Total..... .... $450.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

J. P. POTTS.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 5 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

41 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, T. J. Harris, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of five hundred dollars ($500.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

1,000 bushels wheat, worth the sum of.....	$500.00
6 head of cattle, worth the sum of	240.00
3 gray mares, worth the sum of.....	300.
——, worth the sum of.....	

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of.....
That all of my other debts amount to the sum of.....

And of the above-named property I claim as my exemptions—

——, worth the sum of.....
——, worth the sum of.....
——, worth the sum of.....

Total..... $1,040.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

T. J. HARRIS.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 5 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

42 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, D. F. Sparks, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay,

in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of one hundred dollars ($100.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

500 bu. wheat, worth the sum of..... $250.00
——, worth the sum of.....
——, worth the sum of.....
——, worth the sum of.....

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of.....
That all of my other debts amount to the sum of.....

And of the above-named property I claim as my exemptions—

——, worth the sum of.....
——, worth the sum of.....
——, worth the sum of.....

Total..... $250.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

D. F. SPARKS.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 7 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

43 UNITED STATES OF AMERICA, } *ss:*
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, J. M. Barringer, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of two hundred and fifty dollars ($250.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

6 head of horses, worth the sum of $500.00
Real estate in the town of Newkirk, O. T., worth the sum of. 350.00
——, worth the sum of... .....
——, worth the sum of..... .....

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of.... .....
That all of my other debts amount to the sum of.....

And of the above-named property I claim as my exemptions—

——, worth the sum of.....
——, worth the sum of.... ... .
——, worth the sum of... .....

Total..... ... . $850.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

—— ——.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 7 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

44 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, J. B. Hart, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of two hundred and fifty dollars ($250.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

500 bu. wheat, worth the sum of..... $350.00
10 head of cattle, worth the sum of 250.00
——, worth the sum of... .....
——, worth the sum of..... ....

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of.... .....
That all of my other debts amount to the sum of. .....

And of the above-named property I claim as my exemptions—

——, worth the sum of..... ....
——, worth the sum of..... .....
——, worth the sum of.... ....

Total....: $600.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

J. B. HART.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 7 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

45 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, T. K. Bell, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of one hundred dollars ($100.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

4 head of horses, worth the sum of.. .... $200.00
500 bu. wheat in bin, worth the sum of..... ..... 250.00
——, worth the sum of..... .....
——, worth the sum of..... ....

That the property hereinbefore listed is unencumbered, except the following, to wit:

——, which is encumbered to the amount of..... ....
That all of my other debts amount to the sum of.....

And of the above-named property I claim as my exemptions—

——, worth the sum of.....
——, worth the sum of.....
——, worth the sum of.....

Total $450.00

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

T. K. BELL.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 7 day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

46 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, County of Kay, }

J. C. POTTS, Plaintiff in Error,
vs.
THOMAS N. HOLLEN, Defendant in Error.

I, A. J. Green, being first duly sworn according to law, on my oath *doth* depose and say that I am a resident of the county of Kay, in the Territory of Oklahoma; that I am of lawful age and a citizen of the United States; that I am a freeholder in the said Territory and a married man; that I further say that I am worth the sum of two hundred and fifty dollars ($250.00), consisting of the following property, located in the county of Kay, Territory of Oklahoma, and more particularly described as follows, to wit:

1 pair of 3-year-old fillies, worth the sum of	$80.00
2 yearling colts, worth the sum of.....	40.00
House and lot in Newkirk, worth the sum of.....	450.00
1,000 bushels of wheat, worth the sum of.	500.00

That the property hereinbefore listed is unencumbered.

That all of my other debts amount to the sum of.....
And the above-named property is, over and above my exemptions, which *is* not included therein, worth the sum of.

Total ..... $

I am the same person who signed the bond of the above-named defendant in the case of *the* J. C. Potts, plaintiff, *vs.* Thos. N. Hollen, defendant, case No. —.

A. J. GREEN.

Subscribed in my presence and sworn to before me, after the foregoing affidavit was read to him in full by me, this 17th day of Sept., A. D. 1898.

[SEAL.] W. G. JONES,
Notary Public.

My com. exp. May 11th, 1902.

[Endorsed:] No. 576. Justification of surety on bond. J. C. Potts *vs.* Tho. N. Hollen. Filed this 21st day of Sept. Benj. F. Hegler, clerk sup. ct.

47 (12.)

In the Supreme Court of the United States.

UNITED STATES OF AMERICA, *Supreme Court of Oklahoma,* } *ss:*

To Thos. N. Hollen, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be held in the city of Washington on the 3rd day of October next, pursuant to an appeal filed in the office of the clerk of the supreme court of the Territory of Oklahoma, wherein J. C. Potts is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 3d day of September, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independance of the United States of America the one hundred and twenty-third.

JNO. H. BURFORD,
Chief Justice of Oklahoma Territory.

Attest:
[SEAL.] BENJ. F. HEGLER, *Clerk.*

I hereby accept service of the foregoing citation this 17th day of September, 1898.

E. BEE GUTHREY,
Attorney for Thos. N. Hollen.

Endorsed as follows: J. C. Potts, pl't'f in error, *vs.* Thomas N. Hollen, def't in error. Citation and acceptance — service thereof. Filed Sept. 22, 1898. Benj. F. Hegler, clerk sup. ct.

48 (13.)

UNITED STATES OF AMERICA, *Territory of Oklahoma,* } *ss:*

I, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the above and foregoing papers, numbered from one to 13, all numbers inclusive, to be a full, true,

and perfect and complete transcript and copy of the record, papers, and proceedings and of all thereof filed or had and entered of record in said court in a certain case lately in said court pending, wherein J. C. Potts was plaintiff in error and Thos. N. Hollen was defendant in error, as full and complete as the same still remain on file or of record in my office, at Guthrie, Oklahoma Territory.

I further certify that the original citation herein is hereto attached and herewith returned, together with acceptance of service thereof, duly endorsed thereon by the attorney of record for the defendant in error.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Guthrie, in said Territory, this 24th day of September, 1898.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court.

[Endorsed:] No. 576. J. C. Potts, appellant, *vs.* Thomas N. Hollen, appellee.

Endorsed on cover: Case No. 17,006. Oklahoma Territory supreme court. Term No., 421. J. C. Potts, appellant, *vs.* Thomas N. Hollen. Filed September 28th, 1898.